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# Supreme Court of the United States

**October Term, 1944.**

**No. 423**

UNITED STATES *ex rel.* ROBERT E. LEE JORDAN,
*Petitioner,*

against

HAROLD L. ICKES, Secretary of the Interior.

## PETITION AND BRIEF FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

This is a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia of June 5th 1944 in the above entitled cause.

### Jurisdiction.

The jurisdiction of this Court is invoked under section 240(a) of The Judicial Code as amended by the Act of February 13, 1925, chap. 229, 43 Stat. 936.

### Questions Presented.

1. This case raises for the first time the question of the ownership of and title to the submerged lands off the west

coast of California, within the three-mile limit, covered at all times by the territorial waters of the United States, which were acquired from Mexico by the United States by conquest, purchase, and cession in 1848 and confirmed by the Treaty of Guadalupe Hidalgo.

2. It raises the question as to the ownership and/or reservation of any and all minerals which are or may be found deposited in the submerged lands off the west coast of California within the three mile limit.

3. It raises the question of the interpretation of the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended, 1935 49 Stat. L. 674.

Did Congress, under the terms of the Act and its amendment, confer upon or grant to the Secretary of the Interior the authority and/or discretion

(a) To determine as a matter of law, that the title to and ownership of, the submerged lands, off the west coast of California within the three mile limit, was in the State of California;

(b) To determine as a matter of law, that the deposits of oil, gas, and other minerals in the submerged lands, off the west coast of California within the three mile limit, belong to the State of California;

(c) To determine as a matter of law that the Department of the Interior had no jurisdiction to grant leases of the submerged lands within the three mile limit off the west coast of California when Congress had made no grant of the said lands to that State;

(d) To determine as a matter of law that Appellee had the right to deprive itself of jurisdiction over parts of the public domain, by denying the United States Government's ownership of the submerged lands, within the three mile limit off the west coast of California,

and thereby to forfeit the right, title, and interest of the United States Government to the said submerged lands and minerals therein;

(e) To nullify Appellant's legal right to leases of unreserved parts of the public domain, the submerged lands within the three mile limit off west coast of California, after Appellant had complied with the provisions of the Act and regulations of the Department of the Interior by rejecting Appellant's applications solely upon legal grounds and subsequently suspending action on Appellant's appeals for more than seven years;

(f) To determine as a matter of law that Appellee had the right to suspend action upon the appeals of the Appellant for a period of more than seven years, with no attempt to resolve the legal questions involved during that period of time, which has, due to the dilatory inaction of the Appellee, resulted in tremendous loss to the Appellant and the United States Government, by condoning the exploitation and drainage of Plaintiff's discovery of an oil structure by others, and preventing the development of new oil and gas fields which are urgently needed;

(g) To claim such unlimited discretion under the Act with respect to the granting of leases, as to be able to nullify the operation of the Act at Appellee's whim, when the only discretion granted Appellee under the Act, was to make the "necessary and proper rules and regulations" to effectuate the Act as amended.

4. It raises the question of appellant's right to relief under the Declaratory Judgment Act, Rule 57, Civil Code of Procedure.

## Statement.

This suit originated as the result of the filing of two applications by the Petitioner with the General Land Office of the Department of the Interior on April 6, 1937, for oil and gas leases, under the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended 1935, 49 Stat. L. 674 and the regulations of the Department of the Interior, as set out in Circular No. 1386, of submerged land off the West Coast of California within the three mile limit. These applications were rejected upon a legal finding by the General Land Office, that the submerged lands belonged to the State of California and the Department of the Interior had no jurisdiction to grant leases thereof. (Appellant's Appendix pages 7-10.) On August 6th, 1937, the Petitioner filed appeals from the decision of the General Land Office, to the Secretary of the Interior. These appeals are still pending before the Secretary of the Interior. After waiting from August, 1937, to June 16th, 1942, for some action to be taken, Petitioner filed suit in the District Court for the District of Columbia asking for a declaratory judgment that the title to and ownership of the said submerged lands and the minerals therein, off the West Coast of California and within the three mile limit was in the United States and under the jurisdiction of the Department of the Interior and prayed for coercive relief in order to secure action upon the appeals and execution of the leases, as Petitioner had complied with all the requirements of the Act and regulations of the Department of the Interior in force at the date of filing said applications. (Appellant's R. pp. 1 to 5 inclusive.)

In answer to the Petitioner's suit, in the District Court of the United States for the District of Columbia, the Secretary of the Interior filed a motion for summary judgment, supported by an affidavit setting out that the ques-

tion as to the title to the submerged lands was being investigated by the Department of Justice. Your petitioner submitted certain evidence to the District Court taken from a Congressional Committee record which indicated that the affidavit in support of the motion for summary judgment was not made in good faith; that there had been no action taken by the Department of the Interior or the Department of Justice for a period of more than five years at the time of the filing of the action, and that no action by either the Department of the Interior or the Department of Justice had been taken since the filing of this suit, now more than 7 years; that the expressed desire on the part of the Department of the Interior and the Department of Justice, as set out in the evidence submitted, that the legal questions, herein raised, be resolved, by the Supreme Court of the United States lacked the essential elements of good faith, as evidenced by the motion for summary judgment seeking to prevent such determination.

The motion for summary judgment was sustained by the District Court and judgment entered March 3, 1943.

Petitioner appealed from the judgment of the District Court of the United States for the District of Columbia to the U. S. Court of Appeals for the District of Columbia which on June 5, 1944 affirmed the judgment of the U. S. District Court for the District of Columbia. From this judgment petitioner now prays for a Writ of Certiorari to the Supreme Court of the United States.

## Assignment of Error.

1. The Court erred in rendering judgment, in the instant case, without first determining the question of title to the submerged lands off the West Coast of California and the minerals therein, as all the rights claimed by the appellant are based upon the allegation of ownership of the said lands and minerals in the United States Government. The judgment is, therefore, moot.

2. The Court erred in failing to find that the Oil Land Leasing Act of 1920 as amended does not authorize the Secretary of the Interior to make a legal decision with respect to the title of the submerged lands off the West Coast of California and the ownership of minerals within them.

3. The Court erred in holding that appellant acquired no legal rights under the law to acquire leases by reason of compliance with the Oil Land Lease Act of 1920 as amended and the regulations of the Department of the Interior as set out in Circular 1386.

4. The Court erred in holding in effect that the discretion of the Secretary of the Interior was of greater authority than the Acts of Congress.

5. The Court erred in failing to find that the continued inaction of the Secretary of the Department of the Interior, to pass upon the appeals of the appellant for a period of more than seven years, was and is arbitrary and capricious and that the affidavit filed by the appellee in support of its motion for summary judgment was not made in good faith.

6. The Court erred in sustaining appellee's motion for summary judgment when the question of title to the submerged lands off the West Coast of California and the own-

ership of the minerals therein, which are material issues, were undetermined.

7. The Court erred in holding that the cases cited are controlling, in point of law, in the instant case.

8. The Court erred in holding that the Declaratory Judgment Act was not applicable in the instant case and that the appellant was not entitled to relief under the said Act.

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## Summary of Argument.

It is essential to the claim of the appellant that prior to a decision with respect to his rights to lease submerged land for oil development that the question as to the title to the land be determined. All of appellant's rights are based upon the allegation in the petition that the submerged land and the minerals in them are the sole property of the United States Government. Without the title to the submerged lands and minerals being in the United States, the appellant would have no legal right to leases, the Secretary of the Interior would be without jurisdiction as the submerged lands would not be a part of the public domain, and without jurisdiction, the Secretary of the Interior would have nothing upon which to exercise any discretion. The decision of the United States Court of Appeals for the District of Columbia, in deciding the questions as to appellant's right to leases, the applicability of the Declaratory Judgment Act, and the question of the discretion of the Secretary is moot, as the decision is not grounded upon the question of title to the submerged lands and ownership of the minerals in them. A decision which fails to comprehend the issues involved, lacks the force of an adjudication.

The territory ceded to the United States Government by Mexico at the end of the Mexican War and confirmed by the Treaty of Guadalupe Hidalgo of 1848, transferred to the United States Government all the lands and the territory now embraced in the State of California. California did not come into the Union as a sovereign State as did the 13 original colonies, but under the provisions of the Constitution. The Enabling Act admitting California to the Union did not convey to that State any land. All the land which California secured was under government grant by virtue of Article IV, Sec. III of the Constitution of the U. S. of America. Congress did not make any grant to the State of California of any submerged lands, and the Commission appointed under the authority of an Act of March 3, 1851, Vol. IX, U. S. Stat. L. 631 (Appellant's Brief page 16) which provided that all of the land, claims to which had been rejected by the Commission, shall be deemed held and considered as a part of the public domain of the U. S. The amount of land granted to California appears in U. S. C. A. Title 43, Par. 857, Page 121, which provided that California was entitled to select 500,000 acres, after the land had been surveyed. The records of the Interior Department disclose that California never made any selection of submerged lands. (Appellant's Appendix, Pages 16-17.) Therefore, the logical conclusion is that California is not the owner of the submerged lands off the West Coast of California and the United States not having divested itself of the title to the submerged lands, is still the owner of them. California is therefore not a necessary party to this action.

It has been the policy of our government since the days of its founding to reserve to itself all minerals. In California this same policy was followed and the minerals are still reserved to the U. S. Government. The declaration that the title to the submerged lands belonged to the State of Cali-

fornia as made by the Department of the Interior cannot change the legal status as to the ownership of minerals and cannot be set up as an excuse by the Department of the Interior for not executing the leases applied for, as the government owns the minerals regardless of the question of title to the submerged land. Nor is there any limitation or restriction as to the kind of land in which the minerals may be found. The Courts in considering the question, fail to perceive that the jurisdiction of the Department of the Interior over the mineral deposit in the submerged lands does not, justify the Secretary of the Department of the Interior in refusing to act upon the appeals of the appellant or to grant leases for minerals in the submerged lands. The failure on the part of the courts to give this point consideration, renders their decision contrary to law and confirms the bad faith of the Department of the Interior in seeking to hold up a decision on the merits of the appeals under the guise of investigating the question of title.

The Courts have uniformly ruled that a legal decision made by the Secretary of the Interior is not binding, but subject to review by the Courts. The legal decision of the Secretary of the Interior to the effect that the submerged lands off the West Coast of California belong to the State of California and outside his jurisdiction, is such a legal decision as will warrant its review by the Court. The Oil Land Leasing Act grants no authority to the Secretary of the Interior to make any legal decision with reference to the provisions of the Act.

Under the provisions of the Oil Land Leasing Act of 1920, 41 Stat. L. 437 as amended in August 1935, 49 Stat. L. 674, the U. S. Code, Title 30, Chapter 3, Paragraph 181, provides that the public domain "*shall be* subject to disposition" to citizens of the United States, upon compliance

with the law enacted by Congress and the regulations issued by the Department of the Interior to effectuate that law.

The basis for holding that the appellant acquired no legal right by full compliance with the law to acquire leases and the Regulations of the Department of the Interior is likewise a dicta decision which is advanced without any supporting authorities and under conditions which are not analogous to those in the instant case and cannot be accepted as a rule of law.

The decision of the Court holding that the discretion of the Secretary of the Interior to the grant or refuse leases at his pleasure is not supported by the ruling cases on the subject of the discretion of the Secretary of the Interior and the provisions of the Oil Land Leasing Act do not support the finding of the United States Court of Appeals for the District of Columbia.

The error of the Court in failing to take judicial notice of the subterfuge as set out in the affidavit attached to the appellee's Motion for Summary Judgment pretending that the question as to title was still under consideration is without justification. A delay of seven years to pass upon an appeal cannot be considered other than arbitrary and capricious when it would have been possible at any time to secure a decision on the legal questions involved had the Secretary really desired to do so. The delay can only be accounted for by the allegation of bad faith which is made in the petition of the appellant and which is fully confirmed by the effort of the Department of the Interior to justify its position, by its attempt to mislead the Court with respect to the true facts. The bad faith is confirmed by the statements of Mr. Edelstein of the Department of the Interior and Mr. Biddle, the Attorney General of the United

States, who have both declared they wished the question of title to the submerged lands off the West Coast of California, settled.

The granting of a motion for Summary Judgment was not justified under the law, in view of the material facts at issue. The foundation therefor, based upon a mistake of facts, deprived the appellant of his rights to a hearing on the merits of the case and denied the appellant of his legal rights to leases under the Oil Land Leasing Act of 1920 as amended, by virtue of the reservation of minerals in California.

The cases upon which the Court of Appeals has relied to sustain its opinion are in all cases inapplicable to the questions raised in the instant case, and are neither ruling nor controlling.

The Declaratory Judgment Act was passed for the purpose of adjusting actual controversies, based upon facts. The facts in the instant case are fully set out and the denial of those facts are clear and undisputed. If the Declaratory Judgment Act was enacted for the purpose of settling disputes and making adjudications thereof, it is certainly applicable in the instant case, to declare title and jurisdiction to the submerged land and the minerals in them. The Act further provides that coercive relief may be applied in the furtherance of justice, which is required, if justice be done in the case before the Court.

**Reasons for Granting the Writ.**

It is important to the United States Government that the question of title and ownership of the submerged lands off the West Coast of California, within the three mile limit, be decided in order that it be determined if they are a part of the public domain and subject to be leased by citizens of the

United States, who qualify under the terms of the Oil Land Leasing Act of 1920, as amended in 1935. This question is presented for the first time for the adjudication of this Honorable Court and is a Federal question.

It is in the interests of the United States Government and Appellant that the ownership of minerals, including oil and gas, which are or may be found in the submerged lands off the West Coast of California within the three mile limit be determined, and if they are, according to the general policy of the United States Government with respect to minerals, owned and reserved to the United States Government.

It is of vital interest to the United States Government and Appellant that the authority and/or self-asserted discretion claimed by the Secretary of the Interior under the Oil Land Leasing Act of 1920 and its amendment of 1935 should be interpreted and defined in accordance with congressional action. It should be determined if the Secretary has such power and authority that he may, by a legal decision, divest the United States Government of ownership of parts of the public domain; deny jurisdiction over parts of the public domain, and if he has the legal right, to suspend action on appeals for seven years, and to vitiate the purpose of the Act by withholding decision. It is essential that it be determined whether the will of Congress as expressed in the terms of the Act and amendment, represent the law or whether the Secretary of the Interior, acting under his self-asserted claim of discretion, may set at naught the Act and prevent the leasing of oil lands at his pleasure.

It is in the interests of the United States and the general public that all obstructions to the leasing of oil land, the production and development of new sources of supply, should be removed, including that of the Secretary of the Interior, by a decision of this Honorable Court.

It is exceedingly important that the authority of the Department of the Interior under the Act and its amendment be so defined that there may never be a reoccurence of a situation such as in the instant case.

It is important that the dicta decisions of the courts, regarding the ownership of and title to the submerged lands and the extent of the public domain, included in the territory ceded by Mexico to the United States, be reviewed and made to conform to the acts of Congress and grants made by Congress, with reference to the public domain.

It would appear that a reaffirmance of the previous decisions of this Honorable Court, that legal decisions and mistakes of law made by the Secretary of the Interior, are not binding but are subject to review by the courts.

## Conclusion.

The decision of the United States Court of Appeals fails to embrace the vital points of the controversy. It ignored the basis of the right of appellant to leases to extract oil from the submerged lands off the the West Coast of California which are owned by the United States Government. This is the legal foundation of appellant's action. The judgment entirely ignores the ownership and reservation of the minerals in California, and the jurisdiction of the appellee over them. This is not disputed by appellee, regardless of the question of title to the submerged lands themselves.

There is no showing of any grant of discretion to appellee in the terms of the Oil Land Leasing Act of 1920 as amended. The power granted the appellee was to make rules and regulations and do all things to effectuate the Act. The pur-

pose of the Act was to promote the development of oil and gas. A restrictive discretion, not based on factual obstacles, was never contemplated by Congress. It was for progress, and not to delay development by inaction for seven years, without just cause.

The motion for summary judgment was not made in good faith or in the interests of the Government. The affidavit was intentionally misleading which the facts in the Records fully establish.

The provisions of the Declaratory Judgment Act gives the Court full jurisdiction to grant the prayer for a finding of title to the submerged lands of the West Coast of California and the mineral deposits in them, and a declaration as to jurisdiction over them under the Oil Land Leasing Act of 1920 as amended, and coercive relief for inaction for a period of over seven years to act on appellant's appeals.

The judgment of the U. S. Court of Appeals for the District of Columbia should be reversed, as it lacks the essential elements of an adjudication, by failing to determine the basic legal questions raised.

The questions raised by this action are of first importance and in part have never before been submitted to the Supreme Court. An early authoritative decision on these questions is of urgent need, for in the last analysis the question of title to submerged land and mineral deposits, the interpretation of the Oil Land Leasing Act of 1920 as amended and the discretion of the appellee must be ruled upon by this Honorable Court.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Ap-

peals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; that the United States Court of Appeals for the District of Columbia be reversed by this Honorable Court; and judgment entered in favor of the Petitioner, and your Petitioner prays for such other and further relief in the premises as to this Honorable Court may seem meet and just.

August 31st, 1944.

Respectfully submitted,

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